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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JARON MURPHY,

Defendant and Appellant.

E061226

(Super.Ct.No. SWF1303655)

OPINION

APPEAL from the Superior Court of Riverside County. Albert J. Wojcik, Judge.

Affirmed.

Paul J. Katz, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

A jury convicted defendant and appellant Jaron Murphy of felony second degree burglary (Pen. Code, § 459, count 1).¹ The court sentenced defendant to two years' local incarceration, but suspended the second year for imposition of mandatory supervision.

After defendant filed the notice of appeal, this court appointed counsel to represent him. The lower court later granted defendant's petition pursuant to section 1170.18, to reduce his conviction to misdemeanor shoplifting (§ 459.5). The court granted defendant, who had already been released, credit for 364 days of jail time and ordered mandatory supervision terminated.

Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436, and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case, a summary of the facts, and identifying one potentially arguable issue: whether the court improperly admitted defendant's statements in response to the arresting officer's question as to why defendant ran. We affirm.

FACTUAL AND PROCEDURAL HISTORY

On December 8, 2013, a loss prevention officer at Wal-Mart noticed defendant, and a woman with an infant in a child carrier inside a shopping cart, acting suspiciously. Defendant was "blocking" and acting as a "spotter," techniques whereby someone looks

¹ All further statutory references are to the Penal Code unless otherwise indicated.

out for a would-be shoplifter and blocks the view of other patrons and store associates when the accomplice is concealing items.

When reviewing the surveillance records, the loss prevention officer observed that while defendant was in the electronics department, he selected a cell phone case off a display. Defendant later appeared to remove the cell phone case from its packaging and placed it on his cell phone.

In the health and beauty department, the woman, the mother of defendant's child (the mother), selected merchandise off the displays and placed them in the cart. The mother placed a light-up toy under a blanket in the cart. Defendant assisted in the concealment of the toy.

As defendant and the mother exited the store, they were contacted by loss prevention staff. Defendant ran.

Neither defendant nor the mother paid for the five items that were recovered from their cart after they left the store. A sixth item, the cell phone case observed being taken on the surveillance video, was never recovered. The People and the defense played for the jury three separate videos, totaling over an hour in play time, which consisted of composites of over a dozen different surveillance cameras from both inside and outside the store, which were focused and panned in on defendant and the mother while they were in and exiting the store.

A Riverside sheriff's deputy responded to the store in regard to a report that a male and a female suspect were exiting the store with items for which they did not pay.

The officer saw the loss prevention officer waiting outside for the suspects. He saw defendant immediately take off running after he was contacted by the loss prevention officer upon leaving the store.

Defendant moved toward the officer's patrol vehicle and the officer activated his overhead lights and siren. Defendant "stopped abruptly and changed direction and proceeded to run" in the other direction. The officer followed defendant, saw him discard an item, and eventually apprehended him. The discarded object was never recovered.

The officer handcuffed defendant, placed him in the patrol car, and asked him why he had run. Defendant responded that his "girlfriend had stolen some items"

The mother testified she had taken all the stolen items without defendant's knowledge. Neither she nor defendant took anything from the electronics department. The mother initially told law enforcement she was not with defendant. She had incurred three previous convictions for theft and had been convicted of burglary in the instant case.

Defendant testified he did not take a cell phone case, but rather took his own cell phone case off and put it back on while in the store. The mother never told defendant she had any intention of stealing anything, he had no intention of stealing anything, and he never saw her conceal any objects in the shopping basket. Defendant had incurred convictions for possession of marijuana and possession of a firearm while on parole from a prior conviction.

Prior to trial, defense counsel filed a motion in limine seeking to exclude defendant's statements to the officer as in violation of the dictates of *Miranda*.² The arresting officer testified at the hearing on the motion. He testified that when he apprehended defendant, defendant laid on the ground, at which point the officer told defendant to keep his hands where the officer could see them. The officer then had defendant put his hands behind his back.

The officer handcuffed defendant and placed him in the back of the patrol vehicle. The officer testified defendant "was detained." Between the time the officer handcuffed defendant and placed him in the cruiser, defendant "was saying a lot of things. That he [had] been arrested at Wal[-M]art in Hemet previously. His girlfriend stole some items for his baby. He just—he wouldn't stop talking." The officer asked defendant one question: why defendant had run.

As the officer transported defendant to the police station, defendant "was crying and wailing and he said a lot, but [the officer] didn't say anything else." Defendant said "he ran because he had been caught stealing at Wal[-M]art in Hemet." Defendant "was talking uncontrollably about anything. He was wailing, crying, trying to draw a lot of attention to himself. So he was saying a lot of things." The officer clarified that defendant did not make any of the comments about being previously arrested or that the

² *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*).

mother was stealing items until after the officer had handcuffed him and asked him why he had run.

The court denied defendant's motion reasoning, "From what I've heard, the defendant made various statements before he was arrested. It appears to the Court that there was no interrogation by the officer, there was no questioning by the officer regarding the alleged burglary. Also, indicating he made a statement kind of in the initial stage 'Why did you run,' the defendant made statements that appear to be spontaneous and voluntary statements. There were no accusations. It appears the matter was still in the early investigatory stage. In the vehicle, apparently the officer said almost nothing to the defendant. The officer indicating—the deputy indicated that the statements were made uncontrollably, spontaneously, not in response to any questions intended to elicit any incriminating statements. On that basis, it appears to the Court that the *Miranda* rights were not violated." The court also ruled the probative value of the statements outweighed any prejudicial effect.

The next day during an Evidence Code section 402 hearing, defense counsel moved to exclude defendant's statement that he had previously been arrested for shoplifting: "It has nothing to do with the elements that will be presented, and it's not relevant to any other basis for which he could be convicted other than to show that he is a bad guy that has shoplifted before." The court ruled "the specifics of why he ran, because he had a prior incident at a Wal-Mart prior to that—I won't allow that. I will exclude that part of it only. Any references that he had that—defendant has to prior

similar related accusations perhaps at a different Wal-Mart—yeah. I would exclude that. That might have some different bearing on the jury if I allow that in.”

The officer testified at trial that defendant told him defendant “had a previous incident in the past, and that’s why he ran.” Defense counsel objected. The court ruled, “The last part about the response about the prior incident, that will be stricken. Jurors disregard that part. Up to there about the girlfriend will stand.”

Defendant testified he took the mother to Wal-Mart because she requested that he do so, but he did so reluctantly “[b]ecause I knew I was not supposed to be in a Wal[-M]art from a prior incident.” Defendant testified he had incurred a conviction for theft from Wal-Mart two months earlier: “I knew I wasn’t supposed to be in the Wal[-M]art in Hemet, and I put myself on calendar to go to court three days prior to that event so I can address the issue that happened in the other Wal[-M]art.” “I said that I was stealing from Wal[-M]art prior. I had a prior case in Wal[-M]art.” “When I was in the prior—my prior engagement at Wal[-M]art, it was a situation similar to that where I was guilty and did something, and I was at the door and I ran and they tried to grab me and all that and I—it was just—when it happened again, it was just like a reaction of what just happened, like a couple of months ago.”

DISCUSSION

We offered defendant an opportunity to file a personal supplemental brief, which he has not done. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no arguable issues.³

DISPOSITION

The judgment is affirmed.

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McKINSTER
Acting P. J.

We concur:

KING
J.

MILLER
J.

³ Although in our review we have concluded the court erroneously admitted defendant's statements to the officer in response to the officer's question as to why defendant ran (*People v. Neal* (2003) 31 Cal.4th 63, 79 [" '[T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination'"]), any error was harmless due to the overwhelming evidence adduced against defendant at trial, including, particularly, the surveillance videos. (*In re Art T.* (2015) 234 Cal.App.4th 335, 356 ["When statements are obtained in violation of *Miranda* . . . the error is reviewed under the federal 'harmless beyond a reasonable doubt' standard"]].)